

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

Crl.MC.No. 1700 of 2007()

AGAINST THE ORDER DATED 17/03/2007 IN CRMC. 1722 /2007 IN
CC.114/2005 of JUDL.MAGISTRATE OF FIRST CLASS-II(FOREST
OFFENCES),PUNALUR
.....

PETITIONER: ACCUSED

SANTHOSH KUMAR, S/O SANKARAPILLAI,
RESIDING AT NAVAL AIR FORCE HOUSING COLONY,
17/1584-G-74, MUNDAMVELI P.O., THOPPUMPADY,
KOCHI-34, ERNAKULAM DISTRICT.

BY ADV. SRI.P.M.ZIRAJ

RESPONDENTS: COMPLAINANT

1. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. RAJESH, S/O RAJENDRAN,
RAJESH BHAVAN, EDAYAM.

BY P.P. SRI.GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 28/05/2007 ALONG WITH CRMC NOS.1702 & 1705/07, THE COURT
ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NOs.1700, 1702 &1705 OF 2007

Dated this the 28th day of May, 2007

ORDER

An identical question arises for consideration in all these three Crl.M.Cs. The common petitioner faces indictment in three separate prosecutions - all under Sec.138 of the Negotiable Instruments Act. The petitioner was exempted from personal appearance. The trial was thus held in his absence. At the stage of 313 examination, the learned Magistrate evidently insisted on the personal appearance of the petitioner. The petitioner did not appear. He filed applications requesting that his counsel may be permitted to answer the questions on his behalf. The learned Magistrate found the prayer to be unsustainable. The offences alleged are summons offence. Dispensing with 313 examination is indeed permissible in a case where the accused has been exempted from personal appearance in the course of trial; but that evidently was not the request. In an exceptional case to

serve interests of justice, it may be possible for the court in the alternative to permit the accused to answer the questionnaire at the stage of 313 examination. But the learned Magistrate found that sufficient reasons were not shown to resort to such course for which there was no prayer even. The learned Magistrate further noted certain other inadequacies in the petitions filed. It is, in these circumstances, that the petitions filed by the petitioner were dismissed by the impugned orders.

2. I find absolutely nothing illegal or improper in the impugned orders much less any failure of justice resulting from the impugned orders. The petitioner is allegedly having some back ache. No documents were produced to support such assertions. The learned counsel finally prays only that the petitioner may be permitted to appear and face 313 examination. The warrants of arrest may be ordered to be withdrawn, it is prayed.

3. In the peculiar facts and circumstances of this case, I am satisfied that a direction can be issued that the non-bailable warrants against the petitioner should not be executed till 10/6/07. The petitioner shall by then appear before the learned Magistrate and apply for bail. The learned Magistrate must

CRL.M.C.NOs.1700, 1702 &1705 OF 2007 -: 3 :-

consider such application on merits, in accordance with law and expeditiously. The learned Magistrate must thereafter proceed to question the accused under Sec.313 examination on the date of such appearance itself, if possible.

**Sd/-
(R. BASANT, JUDGE)**

Nan/

//true copy//

P.S. to Judge